

ORIGINAL

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3-2-01
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

VIVIENNE BRAMMER, : 1:CV-01-0231
Plaintiff : (Judge Kane)
v. :
JOHN ASHCROFT, United States :
Attorney General; and CHARLES :
ZEMSKI, Acting District Director, :
Immigration and Naturalization :
Service, Philadelphia District, :
Respondents :
:

FILED
HARRISBURG

MAR 01 2001

MARY E. D'ANDREA, CLERK
PA
DEPUTY CLERK

RESPONDENTS' EXHIBITS IN SUPPORT
OF THEIR RESPONSE TO HABEAS CORPUS PETITION

DAVID M. BARASCH
United States Attorney

KATE L. MERSHIMER
Assistant United States Attorney
228 Walnut Street, Suite 220
P.O. Box 11754
Harrisburg, PA 17108-1754
(717) 221-4482

Date: March 1, 2000

TAB - 1

U.S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: A76 577 739

In the Matter of:

| | | |
|--|------------------|--|
| Respondent: | Inmate # 6233-98 | BRAMMER, Viviene A. |
| BERKS COUNTY PRISON 1287 COUNTY WELFARE RD. LEESPORT | PA | 19533 |
| (Number, street, city, state and ZIP code) | | (610) 208-4800 (Area code and phone number) |

1. You are an arriving alien.
 2. You are an alien present in the United States who has not been admitted or paroled.
 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of JAMAICA and a citizen of JAMAICA;
3. You were admitted to the United States at Philadelphia, Pennsylvania on November 18, 1993 as a nonimmigrant visitor for pleasure (B-2);
4. On November 4, 1998, you adjusted your status to that of a Lawful Permanent Resident (LPR) pursuant to Section 245 of the Immigration and Nationality Act;
5. You were, on April 12, 1999, convicted in the Court of Common Pleas of Berks County, Pennsylvania of THEFT BY DECEPTION counts), in violation of PA Crimes Code Title 18, Section 3922 (a)(1);
6. For that offense under docket number 0206-99, you were sentenced to imprisonment for not less than six (6) months and not more than twenty-three (23) months.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 237(a)(2)(A)(iii) of the of the Immigration and Nationality Act (Act), as amended, in that, at any time after admission, you have convicted of an aggravated felony as defined in section 101(a)(43)(G) of the Act.

Section 237(a)(2)(A)(ii) of the of the Immigration and Nationality Act (Act), as amended, in that, at any time after admission, you have been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct.

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.
 Section 235(b)(1) order was vacated pursuant to: 8 CFR 208.30(f)(2) 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: TO BE CALNEDARED AT A LATER DATE.

(Complete Address of Immigration Court, Including Room Number, if any)
 on To be set at To be set to show why you should not be removed from the United States based on the
 (Date) (Time) charge(s) set forth above.

Kevin F. O'Neil
Kevin F. O'Neil, Acting ADDI

(Signature and Title of Issuing Officer)

Date: 7/7/99

Philadelphia, PA

(City and State)

See reverse for important information

See reverse for important information

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appear before an immigration judge.

(Signature of Respondent)

Before:

(Signature and Title of INS Officer)

Date:

Certificate of Service

This Notice to Appear was served on the respondent by me on 7/14/99 (Date), in the following manner and in compliance with section 239(a)(1)(F) of the Act:

in person by certified mail, return receipt requested

by regular mail

Attached is a list of organizations and attorneys which provide free legal services.

The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

(Signature of Respondent if Personally Served)

(Signature and Title of Officer)

Mark W. Oleza, SA/PHZ

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Custody Determination

BRAMMER, Viviene

BCP# 6233-98

File No: A 76577739

Date: Oct 5 1999

Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that pending a final determination by the Immigration Judge in your case, and in the event you are ordered removed from the United States, until you are taken into custody for removal, you shall be:

detained in the custody of this Service.
 released under bond in the amount of \$ _____.
 released on your own recognizance.
 You may request a review of this determination by an Immigration Judge.
 You may not request a review of this determination by an Immigration Judge because the Immigration and Nationality Act prohibits your release from custody.

Theodore R. Nordmann *TDK*
(Signature of authorized officer)

ADD/DDP
(Title of authorized officer)

Philadelphia, PA
(INS office location)

do do not request a redetermination of this custody decision by an Immigration Judge.
 I acknowledge receipt of this notification.

(Signature of respondent)

(Date)

RESULT OF CUSTODY REDETERMINATION

On _____, custody status/conditions for release were reconsidered by:

Immigration Judge District Director Board of Immigration Appeals

The results of the redetermination/reconsideration are:

No change - Original determination upheld.
 Detain in custody of this Service.
 Bond amount reset to _____

Release - Order of Recognizance.
 Release - Personal Recognizance.
 Other: _____

(Signature of officer)

EXHIBIT - 2



JAN 06 1998

INFORMATION

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA

DOCKET NO. 4911/98

COMMONWEALTH OF PENNSYLVANIA

vs.

VIVIENE ADASSAR BRAMMER

The District Attorney of Berks County, by this Information, charges that:

Count No. 1 - **THEFT BY DECEPTION**

THE DEFENDANT DID, on or about DECEMBER 7, 1994, in the County aforesaid, intentionally obtain or withhold property, of another, by deception, by intentionally creating or reinforcing a false impression, including false impressions as to law, value, intention or other state of mind, to wit: CHECK #0301-09960, having a value of \$496.17 more or less, in violation of 18 Pa.C.S.A. §3922(a)(1). Grading: M1.

Count No. 2 - **RECEIVING STOLEN PROPERTY**

THE DEFENDANT DID, on or about DECEMBER 7, 1994, in the County aforesaid, intentionally receive, retain or dispose of the movable property of another, having a value of \$496.17, more or less, knowing that it had been stolen, or believing that it had probably been stolen, the property not being received, retained or disposed of, with the intent to restore it to the owner, in violation of 18 Pa.C.S.A. §3925(a). Grading: M1.

All of which is against the Act of Assembly and the peace and dignity of the Commonwealth of Pennsylvania.

1/6/99

Date

Michael J. Stachow
Assistant District Attorney

Extract from the record of said court Page 1 of 1

Certified this 20th day of April 1999

Clerk of Common Pleas - Juvenile Division

Per Sandra Bonell Deputy

EXHIBIT - 3

COMMONWEALTH OF PENNSYLVANIA

v.

In the Court of Common Pleas
of Berks County, Pennsylvania
Criminal DivisionCriminal Action No. 4911-98Viviane Adassar BrammerCount No. 1 Theft of AcetylenePROBATION ORDER

Page 1 of 2

AND NOW, April 12, 1999, the order is that the Defendant be placed on probation for a period of 5 (days), (months), (years) under the supervision of:

the Berks County Probation Office.
 the Pennsylvania Board of Parole.
 the County State of residence by transfer through the Inter-State Compact or Intra-State Agreement.
 the probation period shall commence on: () this date, () and be concurrent with criminal action number(s) 206-99-C-1, () at the expiration of the () sentence(s), () probation order to Criminal Action No(s), 206-99-C-1, () and will be concurrent with _____.
 Defendant to be placed on probation with electronic monitoring, in lieu of incarceration, for _____ (days), (months), under the supervision of the Berks County Probation Office, and shall pay \$ _____ per day for the use of the equipment, with \$ _____ due for installation costs, upon release.

Electronic monitoring equipment shall be installed on or before _____.

In addition to the above probation, the Defendant shall:

Pay the costs of prosecution.
 Pay the sum of \$ 50.00 Co. Use to the use of the County.
 Pay no restitution.
 Pay no restitution by agreement of counsel.
 Pay restitution in the amount of \$ 476.17 *Ind. Dent.*, joint and several, as agreed to by counsel and distributed by the Clerk of Courts, as directed by the District Attorney.
 Pay restitution as agreed to by Counsel, as stated in an Order which shall be submitted by the District Attorney within sixty (60) days, and to be distributed by the Clerk of Courts as directed by the District Attorney, or the District Attorney shall petition for a hearing within sixty (60) days.
 Restitution shall be paid before fines and costs.
 Submit to urine surveillance and other testing, and pay the costs of such testing as directed.
 Participate in any program, including inpatient treatment, such as: _____ drug and alcohol, _____ mental health, _____ sex offender therapy, _____ other _____, as directed by the Berks County Probation Office and/or the Pa. Board of Parole as applicable, and pay the costs thereof as directed.
 Because the order is pursuant to the Controlled Substance, Drug, Device and Cosmetic Act of Pennsylvania, all Federal Benefits are hereby denied in accordance with the provisions of Section 5301 of the Federal Anti-Drug Abuse Act of 1988, P.L. No. 100-690 for the following term of years:

Possessor: () This being a first offense for a period of _____. (Cannot exceed one [1] year).
 This being a second or subsequent offense for a period of _____.
(Cannot exceed five [5] years).

Trafficker: () This being a first offense for a period of _____. (Cannot exceed one [1] year).
 This being a second offense for a period of _____. (Cannot exceed ten [10] years).

Extract from the ~~Record of Offense~~
Certified this 20th day of April 1998

JAMES P. TAYLOR

Commonwealth Attorney, Commonwealth Prison, Pink-Defendant, Pink-Defense Counsel, Goldenrod-District Attorney,

Canary-Judge

Andrea Bonell

Deputy

COMMONWEALTH OF PENNSYLVANIA

v.

Viviane Adassar BrammerIn the Court of Common Pleas
of Berks County, Pennsylvania
Criminal DivisionCriminal Action No. 4911-98Count No. IT left y DeceptionPROBATION ORDER

Page 2 of 2

The defendant shall also:

(Pay the sum of \$25.00 to the County of Berks each month towards the cost of supervisory control with payments to begin (immediately), (effective date of sentence). (Not to exceed \$1500.00). ^{Sup C-7}
 () Participate in _____ hours of Community Service as directed by the Berks County Community Service Department, to be completed on or before _____, and pay any fees established.

This is a case:

() Involving drugs with a value of more than \$1,000.00
 () In which a motor vehicle was essentially involved.
 () and in which the vehicle driven by the defendant was a commercial vehicle.
 () Other Special Conditions:

Defendant shall be subject to such conditions governing probation, including a plan for payment of costs, fees for use of the county, and/or restitution and said monies are to be paid before the end of the 52 month of the probationary period as established by the Berks County Probation Office, or as established by the Pa. Board of Parole as applicable.

BY THE COURT:

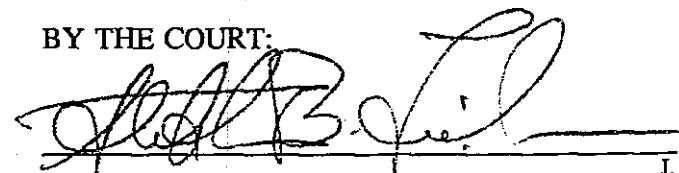

 A handwritten signature in black ink, appearing to read "J. B. J.", is placed over the signature line. A small "J." is written at the bottom right of the signature.

EXHIBIT - 4



JAN 28 1999

INFORMATION

IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA

DOCKET NO. 0206/99

COMMONWEALTH OF PENNSYLVANIA

vs.

VIVIENE A. BRAMMER

The District Attorney of Berks County, by this Information, charges that:

Count No. 1 - **THEFT BY DECEPTION**

THE DEFENDANT DID, on or about MARCH 21, 1998 THROUGH NOVEMBER 17, 1998, in the County aforesaid, intentionally obtain or withhold property, of another, by deception, by intentionally creating or reinforcing a false impression, including false impressions as to law, value, intention or other state of mind, to wit: US CURRENCY, having a value of \$29363.35 more or less, in violation of 18 Pa.C.S.A. §3922(a)(1). Grading: F3.

Count No. 2 - **RECEIVING STOLEN PROPERTY**

THE DEFENDANT DID, on or about MARCH 21, 1998 THROUGH NOVEMBER 17, 1998, in the County aforesaid, intentionally receive, retain or dispose of the movable property of another, having a value of \$29363.25, more or less, knowing that it had been stolen, or believing that it had probably been stolen, the property not being received, retained or disposed of, with the intent to restore it to the owner, in violation of 18 Pa.C.S.A. §3925(a). Grading: F3.

All of which is against the Act of Assembly and the peace and dignity of the Commonwealth of Pennsylvania.

1/25/99
Date

R. Keeler B. 00
Assistant District Attorney

Page 1 of 1

Extract from the record of said court

Certified this 20th day of April 1999

Court of Common Pleas - Criminal Division

For Andrea Bonell Deputy

EXHIBIT - 5

Commonwealth of Pennsylvania

v.

Court of Common Pleas
of Berks County, Pennsylvania
Criminal DivisionCriminal Action 206-99Count No. 1 Theft by
Deception

Page 1 of 2

Viviane Adasser BrammerSentence Order

AND NOW, April 12, 1999, the sentence is that the defendant be committed for a period of not less than 6 (hrs), (days), months, (years) nor more than 2-3 (days), months, (years) to:

- the Berks County Prison, and upon completion of his/her minimum sentence shall be released without a petition upon approval of a suitable parole plan by the Berks County Parole Office.
- the Bureau of Corrections for confinement in a State Correctional Facility.
- Defendant to be eligible for furlough with electronic monitoring after serving _____ (days), (months) of sentence, as determined by Berks County Parole Office. (Non IPP Sentence)
- Defendant to be released from Berks County Prison / / and to be placed on electronic monitoring for _____ (days), (months), under the supervision of the Berks County Parole Office, and shall pay \$ _____ per day for the use of the equipment, with \$ _____ due for installation costs upon release. Electronic monitoring equipment shall be installed on or before _____.
- This sentence shall be effective this date.
- This sentence shall be effective this date and will be concurrent with the sentence(s) imposed at Criminal Action No(s). _____
- This sentence shall commence at the expiration of the sentence(s) imposed at Criminal Action No(s). _____ () and shall be consecutive to said sentence(s), () and will be concurrent with _____.

The defendant is to receive credit for 25 days served.

In addition to the above confinement, Defendant shall:

- Pay the costs of prosecution.
- Pay a fine in the sum \$ 450.00.
- Pay no restitution.
- Pay no restitution by agreement of counsel.
- Pay restitution in the amount of \$ 33,648.75, joint and several, as agreed to by counsel and distributed by the Clerk of Courts, as directed by the District Attorney.
- Pay restitution as agreed to by Counsel, as stated in an Order which shall be submitted by the District Attorney within sixty (60) days, and to be distributed by the Clerk of Courts as directed by the District Attorney, or the District Attorney shall petition for a hearing within sixty (60) days.
- Restitution shall be paid before fines and costs.
- Submit to urine surveillance and other testing, and pay the costs of such testing as directed.
- Participate in any treatment programs, including inpatient treatment, such as: drug and alcohol, mental health, sex offender therapy, other _____, as directed by the Berks County Parole Office and/or the Pa. Board of Parole as applicable, and pay the costs thereof as directed.
- Because the sentence is pursuant to the Controlled Substance, Drug, Device and Cosmetic Act of Pennsylvania, all Federal Benefits are hereby denied in accordance with the provision of Section 5301 of the Federal Anti-Drug Abuse Act of 1988, P.L. No. 100-690 for the following term of years:

Possessor: This being a first offense for a period of _____. (Cannot exceed one [1] year).
 This being a second or subsequent offense for a period of _____. (Cannot exceed five [5] years).

Trafficker: This being a first offense for a period of _____. (Cannot exceed one [1] year).
 This being a second offense for a period of _____. (Cannot exceed ten [10] years).
 This being a third or subsequent offense, for life.

Commonwealth of Pennsylvania

Y.

In the Court of Common Pleas
of Berks County, Pennsylvania
Criminal Division

Criminal Action 206-93

Count No. 1 Theft by
Deception

Sentence Order

Page 2 of 2

The defendant shall also:

() Pay the sum of \$ _____ towards the cost of the Court Reporting Network.

() Attend the Alcohol Safe Driving Program and pay \$ _____ towards the cost of said program within thirty (30) days of being paroled.

() Pay the sum of \$ 25-00 to the County of Berks each month towards the cost of supervisory control, with payment to begin (upon being paroled), (effective date of sentence).
(Not to exceed \$ 425-00).

() Pay the sum of \$ _____, to be distributed as provided for in 42 Pa. C.S. Section 3571 and Section 3573 among the Commonwealth, Berks County and/or municipality.

() Participate in _____ hours of Community Service, to be completed on or before _____ and pay any fees established.

() Undergo treatment under the Vehicle Code 75 Pa. C.S. Section 1548(d) (Act 122 of 1990).

This is a case:

() Involving drugs with a value of more than \$1,000.00
() In which a motor vehicle was essentially involved.
 () and in which the vehicle driven by the defendant was a commercial vehicle.
() Other Special Conditions:

Defendant shall be subject to such conditions governing parole, including a plan for the payment of costs, fines, and/or restitution as established by the Berks County Parole Office, or as established by the Pennsylvania Board of Parole, as applicable.

BY THE COURT:

BY THE COURT:

EXHIBIT - 6

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
York, Pennsylvania

File No.: A 76 577 739

March 10, 2000

In the Matter of)
VIVIENE A. BRAMMER,)
Respondent)
IN REMOVAL PROCEEDINGS

CHARGES: Section 237(a)(2)(A)(iii) of the I&N Act -
Aggravated felony by reference to INA Section
101(a)(43)(G), theft offense for which the term of
imprisonment is greater than one year; and

Section 237(a)(2)(A)(ii) of the I&N Act - Two
crimes involving moral turpitude not arising out
of a single scheme of criminal misconduct.

APPLICATION:

ON BEHALF OF RESPONDENT:

Sandra Greene, Esquire
140 Roosevelt Avenue
Suite 202
York, Pennsylvania 17404

ON BEHALF OF SERVICE:

Maureen Gaffney, Esquire
Assistant District Counsel
3400 Concord Road
York, Pennsylvania 17402

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent's admitted being a citizen and native of Jamaica, who entered the United States as a non-immigrant visitor for pleasure in 1993 and adjusted her status to lawful permanent resident on November 4, 1998. She also admitted being convicted on April 12, 1999 for two counts of theft by deception. These two crimes did not arise out of a single scheme of criminal misconduct, according to her admission. She denied that the

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sentence was six months to 23 months, and the Court finds, by reference to Exhibit B, submitted by the Immigration Service, that the sentence was from six months to 23 months, and so allegation six, though denied, is found to be sustained.

The respondent has denied removability as charged because she alleges the crime of theft by deception, under Pennsylvania statute, is not a crime involving moral turpitude and is not an aggravated felony. This is argued by virtue of the specific language in the Pennsylvania statute. The Court has examined carefully the briefs of the respondent and of the Immigration Service, and while a linguistic argument of serious proportions has been made, the Court believes that, ultimately, the argument must fail. The term "intentionally" is defined in Pennsylvania law, under Section 302(b), in several different ways, but it is important that intentionally and knowingly both receive their separate definitions. The definition of "intentionally" includes that it's a person's "conscious object to engage in conduct or to cause a certain result." It also says that if there are certain intended circumstances involved in the intentionality, the perpetrator must be aware of the existence of such circumstances and must, at least, believe or hope that those circumstances exist. The statute in question permits conviction when a person creates or reinforces a false impression and then acts on what it hopes or believes that impression to be by acquiring something of value from another person, or depriving

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that other person of something of value, Pennsylvania statute, Section 3922(a). We've been pointed to case law, and it appears that the main case in which this issue has been addressed, or analogous issue, at least, is Commonwealth v. Linder, 284 PA supra, 327, 334, 425 Atl. 2.d 1126, 1129-30 (1981), which says, "Section 3922 of the Crimes Code clearly gives a person of ordinary intelligence notice that it is unlawful for that person to intentionally create a false impression in the mind of another and then use the other person's reliance on the false impression to obtain someone else's property. This statute does not penalize a person for what is in his mind, as appellant argues, but rather it punishes a person for his actions in creating a false impression and thereby obtaining another's property." This citation addresses a point that's not raised in this particular case, that is, the respondent is not arguing before Pennsylvania Court that she is being punished only for creating a false impression, but rather is arguing here that is it possible for her to be convicted by creating an impression that she does not know is false. The Court has considered carefully this view and holds that the cited section requires for a conviction that a person "intentionally create a false impression in the mind of another." If a person unintentionally creates a false impression in the mind of another, the person cannot be convicted. This means that if a person intentionally creates an impression that the person (the defendant in the case) does not know is false,

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then such person has only unintentionally created a false impression in the mind of another and has not done so intentionally. In other words, if the respondent's actions in this case were such that they would not constitute a crime involving moral turpitude, or a theft offense for Immigration purposes, i.e. that she did not have any knowledge that the impression she intentionally created was false, the Court believes that she would not be convicted under this statute. Since she was convicted under this statute, as interpreted by the Pennsylvania Courts, it is clear that she has been convicted of a crime involving moral turpitude because there is the intention to create an impression that she knows is false and there is an intention to deprive a person of property on the basis of that impression. It also constitutes a theft offense because it involves the taking of property under, in this case, false pretenses, and it meets the general definition then of theft. See the Immigration Services brief and citation to Black's Law Dictionary. And the Court, therefore, finds that the respondent's been convicted of an aggravated felony and has been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct. She appears not to be eligible for any form of relief, and the Court must, therefore, enter the following order:

ORDER

IT IS ORDERED that the respondent be deported from the

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United States to Jamaica.

WILLIAM VAN WYKE
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before
WILLIAM VAN WYKE in the matter of:

VIVIENE A. BRAMMER

A 76 577 739

York, PA

was held as herein appears, and that this is the original
transcript thereof for the file of the Executive Office for
Immigration Review.

Patricia A. Lindenmuth
(PATRICIA LINDENMUTH, Transcriber)

Deposition Services, Inc.
6245 Executive Boulevard
Rockville, Maryland 20852
(301) 881-3344

April 30, 2000
(Completion Date)

EXHIBIT - 7



U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

*Alien
Appeal*

5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041

Greene, Sandra L.
1251 Wallace Street, Suite #3
York, PA 17403-0000

INS LIT./York Co. Prison/YOR
3400 Concord Road
York, PA 17402

Name: BRAMMER, VIVIENE A.

A76-577-739

Date of this notice: 11/13/2000

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Very Truly Yours,

Paul W. Schmidt

Paul W. Schmidt
Chairman

Enclosure

Panel Members:

GUENDELSBERGER, JOHN
JONES, PHILEMINA M.
MILLER, NEIL P.

Exh. 7

ROBERTSB

Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A76 577 739 - York, Pennsylvania

Date:

NOV 13 2000

In re: VIVIENE A. BRAMMER

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Sandra L. Greene, Esquire

ON BEHALF OF SERVICE: Maureen C. Gaffney
Assistant District Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony

237(a)(2)(A)(ii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(ii)] -
Convicted of two or more crimes involving moral turpitude

ORDER:

PER CURIAM. The respondent has appealed the decision of an Immigration Judge dated March 10, 2000. The respondent argues that the Immigration Judge erred by in finding her subject to removal and statutorily precluded from relief from removal. The respondent's appeal fee waiver request is granted. The appeal will be dismissed.¹

The record reflects that the respondent was convicted on April 12, 1999, in the Court of Common Pleas of Berks County, Pennsylvania, for the offense of Theft by Deception (2 counts) in violation of 18 Pa.C.S.A. § 3922(a)(1). The record indicates that the two counts that resulted in the respondent's conviction did not arise out of a single scheme of criminal conduct. The record reveals that the respondent was sentenced to a term of imprisonment of 6 to 23 months as a result of the convictions.

The respondent contends that the Immigration Judge erred in finding that she had been convicted of an "aggravated felony," as that term is defined in section 101(a)(43)(G) of the Immigration and Nationality Act. The respondent further contends that the Immigration Judge erred in finding that

¹ We have accepted the respondent's appellate brief as timely filed.

A76 577 739

she had been convicted of two crimes involving moral turpitude because the statute under which she was convicted does not require specific intent and is therefore not necessarily a crime involving moral turpitude.

Based upon our review of the record, we find no error in the Immigration Judge's determination that the respondent is subject to removal as charged. This Board has held that a taking of property constitutes a "theft offense" whenever there is criminal intent to deprive the owner of the rights and benefits of ownership, even if such deprivation is less than total or permanent. *Matter of V-Z-S*, Interim Decision 3434, at 10 (BIA 2000). Theft offenses "have been readily categorized as involving moral turpitude," however, "the specific statute under which the conviction occurred is controlling." *Matter of Lopez-Meza*, Interim Decision 3423, at 7-8 (BIA 1999). The term "theft" defined in the statute under which the respondent was convicted states that "[a] person is guilty of theft if he **intentionally** obtains or withholds property of another by deception."¹⁸ Pa.C.S.A. § 3922(a)(1) (emphasis added). Because the statute contains an element of specific intent, we find no error in the Immigration Judge's determination that the respondent's convictions for Theft by Deception are crimes involving moral turpitude.

As noted above, these crimes did not arise out of a single scheme of criminal misconduct. The record indicates that the crimes were unrelated and occurred at different times, between March 21, 1998, and November 17, 1998. *See Matter of Adetiba*, 20 I&N Dec. 506, 511-512 (BIA 1992) (each act in ongoing criminal scheme represents a distinct and separate crime). As the respondent has been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, we find that the determination of the Immigration Judge that the respondent is deportable as charged is correct. *See* section 237(a)(2)(A)(ii) of the Act. Furthermore, because the respondent was sentenced to a term of incarceration of at least one year, she has also been convicted of an "aggravated felony," as defined in section 101(a)(43)(G) of the Act.

We further find no error in the Immigration Judge's determination that the respondent's conviction renders her statutorily ineligible for the relief of cancellation of removal under section 240A(a) of the Act. Aliens seeking relief under section 240A(a) of the Act are ineligible if they have "been convicted of any aggravated felony."

For the reasons stated above, the appeal is dismissed.


FOR THE BOARD

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

| | | |
|---|---|------------------|
| VIVIENNE BRAMMER, Petitioner | : | No. 1:CV-01-0231 |
| v. | : | (Judge Kane) |
| JOHN ASHCROFT, United States Attorney General; and CHARLES ZEMSKI, Acting District Director, Immigration and Naturalization Service, Philadelphia District, | : | |
| Respondents | : | |

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

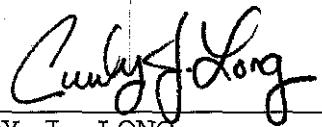
That this 1st day of March, 2001, she served a copy of the attached.

RESPONDENTS' EXHIBITS IN SUPPORT OF THEIR
RESPONSE TO HABEAS CORPUS PETITION

by placing said copies in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

ADDRESSEE:

Sandra Greene, Esquire
140 Roosevelt Avenue, Suite 202
York, PA 17404



CINDY J. LONG
Legal Secretary